

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EVE V. GONZALES, Personal
Representative of the Estate of MIGUEL
VIVERO GONZALES, Deceased, and his
heirs,

Plaintiff,

v.

F/V DANIELA, U.S. Coast Guard official
number 531005, her engines, tackle, apparel,
furniture, and appurtenances *in rem*; AACH
HOLDING CO. NO. 2, LLC, a Florida
limited liability company; AACH HOLDING
CO., LLC, a Florida limited liability
company; SARDINHA AND CILEU
MANAGEMENT, INC., a California
corporation, *in personam*, and DOES 1
through 20, inclusive,

Defendants.

Civil No. 11cv01066 AJB (JMA)

**ORDER GRANTING PLAINTIFF'S
AMENDED MOTION FOR LEAVE TO
FILE A FIRST AMENDED
COMPLAINT**

[Doc. No. 39]

Before the Court is Plaintiff's Amended Motion for Leave to File a First Amended Complaint, filed January 7, 2013. (Doc. No. 39.) On February 1, 2013, Defendants filed a Notice of Non-Opposition to Plaintiff's Motion. (Doc. No. 43.) Pursuant to Civil Local Rule 7.1.d.1, the Court finds the motion suitable for determination on the papers and without oral argument. Accordingly, the motion hearing set for March 28, 2013, is hereby vacated. For the reasons set forth below, Plaintiff's Motion is granted.

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Pursuant to the Federal Rules of Civil Procedure, a plaintiff may amend the complaint once as a matter of course without leave of court prior to a defendant filing a motion under Rule 12(b). Fed. R. Civ. P. 15(a)(1)(B). Here, because Defendants have previously filed a Rule 12(b)(6) motion to dismiss, leave of Court is required. In these circumstances, Rule 15(a)(2) provides as follows:

Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

This policy is to be applied with "extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). The grant or denial of leave to amend a complaint is within the Court's discretion. In deciding whether to grant leave to amend a complaint, the Court may consider the following factors: bad faith, undue delay, futility of amendment, and prejudice to the opposing party. *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962). However, not all of these factors merit equal weight. *Eminence Capital, LLC*, 316 F.3d at 1052. It is the consideration of prejudice that carries the greatest weight. *Id.* Absent prejudice, or a strong showing of the remaining factors, there is a presumption in favor of granting leave to amend. *Id.*

Here, Plaintiff seeks to amend her Complaint for the first time in order to add additional claims for relief. (Doc. No. 39-3 at 3.) During the discovery process, Plaintiff alleges that she discovered Defendants' intent to argue that the decedent, Miguel Vivero Gonzalez, was not a seaman covered by the Jones Act at the time of his death. (*Id.* at 2-3.) Accordingly, Plaintiffs seeks to add the three following claims that would clearly apply to a non-seaman working aboard Defendants' Vessel: (1) Wrongful Death and Survival Claim Under the General Maritime Law for General Negligence against Defendants; (2) Inherently Dangerous Work or Activities Under the General Maritime against Defendants; and (3) Strict Liability Under the General Maritime Law for Ultra Hazardous Activities. (*Id.* at 2).

In light of Defendants' non-opposition to Plaintiff's Motion and Plaintiff's reasonable explanation for the requested amendment, the Court finds that amendment is warranted under the circumstances. The Court considered the applicable factors and concludes that permitting the amendment will not cause undue delay or prejudice to Defendants, nor is Plaintiff's request futile or made in bad faith.

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2 For the reasons set forth above, the Court **ORDERS** as follows:

- 3 1. Plaintiff's Amended Motion for Leave to File a First Amended Complaint is **GRANTED**;
- 4 2. Plaintiff will file the First Amended Complaint in accordance with this Order, on or before
- 5 February 25, 2013; and
- 6 3. Defendants will file a responsive pleading in accordance with the applicable rules.

7 IT IS SO ORDERED.

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9 DATED: February 4, 2013

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11 Hon. Anthony J. Battaglia
U.S. District Judge

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